ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Southwestern Bell Telephone Letter Regarding Interconnection Between Paging Carriers and Local Exchange Carriers	)	CPD 97-24
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

COMMENTS OF PAGING NETWORK, INC.
ON SOUTHWESTERN BELL TELEPHONE
LETTER REQUESTING RECONSIDERATION

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to the Common Carrier Bureau's May 22, 1997, Public Notice,[1] hereby comments on the May 9, 1997, letter of Southwestern Bell Telephone ("SWBT")[2] styled as a request for clarification of the Commission's rules regarding interconnection between local exchange carriers ("LECs") and paging carriers.

As discussed below, SWBT's *Letter* is an untimely petition for reconsideration. As such, SWBT's *Letter* is fatally, procedurally defective and should be summarily dismissed. In any event, even if the Commission does not dismiss the *Letter* as an untimely petition for

---

[1] DA 97-1071

[2] Letter from Paul E. Dorin, Attorney, SWBT, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC, dated April 25, 1997 ("Letter").

reconsideration, the charges SWBT seeks to impose are inconsistent with the Act and the Commission's Rules. Therefore, the "clarification" SWBT requests is unwarranted, and should be denied.

I. Statement of Interest

PageNet, through its subsidiaries, is the largest paging carrier in the United States, serving over nine and one-half million units. PageNet participated actively in the Commission's interconnection proceedings (CC Docket Nos. 96-98 and 95-185) in which the Commission determined that paging carriers, like all other local telecommunications carriers, are entitled to enter into reciprocal compensation arrangements with incumbent LECs ("ILECs"), such as SWBT, and receive compensation for traffic originating on the ILEC networks that the paging carriers are obligated to accept and terminate. Moreover, PageNet also was one of four carriers — along with AirTouch Communications, Inc., AirTouch Paging, and AT&T Wireless Services, Inc. — that recently obtained confirmation from the Common Carrier Bureau that

> [S]ection 251(b)(5) of the 1934 Act, as amended by the Telecommunications Act of 1996, prohibits LECs from charging CMRS carriers to terminate traffic that originates on the LECs' networks.[3]

Finally, PageNet joined these other three carriers in an initial response to the SWBT *Letter* on May 16, 1997,[4] prior to issuance of the Public Notice.

SWBT's self-styled "clarification" proposal to allow it to assess charges on paging carriers for SWBT-originated traffic, if adopted, would have widespread and adverse

---

[3] Letter from Ms. Keeney to Cathleen A. Massey, Kathleen Q. Abernathy, Mark Stachiw, and Judith St. Ledger-Roty, dated March 3, 1997 ("Keeney Letter").

[4] Letter from Ms. Massey, Ms. Abernathy, Mr. Stachiw, and Ms. St. Ledger-Roty to Ms. Keeney, dated May 16, 1997 ("Joint Response").

significance for paging companies. Adoption of the relief sought by SWBT would adversely impact paging companies by artificially increasing their operational costs. Accordingly, PageNet has a vital interest in the proper resolution of this matter.

II. The SWBT *Letter* Is a Procedurally Defective Petition for Reconsideration

Although styled as a request for "clarification . . . concerning interconnection between LECs and paging providers," the SWBT *Letter* in reality seeks reconsideration of Section 51.703(b) of the Rules.[5] SWBT requests authority to charge paging carriers for traffic originated on *its* network by *its* customers and terminated on the paging carriers' network. Section 51.703(b), adopted pursuant to Section 251(d)(1) of the Telecommunications Act of 1996 ("1996 Act"), provides clearly that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). The "clarification" SWBT seeks is thus in direct contradiction to the Commission's Rules, and should be denied.[6]

---

[5] SWBT's claim that Section 51.709(b) is relied upon by PageNet and other paging carriers to reach such a result is inaccurate. *See Letter* at 2-3. As the *Joint Response* made clear, the paging carriers do not seek support in Section 51.709(b) (which has been stayed) in challenging SWBT's unlawful charges. *Joint Response* at 3-4. Section 51.709(b) addresses the situation where a carrier purchases all or a portion of facilities for transport of traffic *to the LEC* for termination. That is not the scenario here which involves charges for LEC-originated traffic terminated by another carrier, and is fully addressed by the *effective* Section 51.703(b). Accordingly, the fact that Section 51.709(b) has been stayed does not affect the validity of the paging industry's response to, or the proper disposition of, SWBT's *Letter*.

[6] As discussed below, p. 8, SWBT's claim to seek compensation for "facilities," not "traffic," is an attempt at subterfuge. In this case, there is no difference between the two.

Because the *Letter* seeks the negation of Section 51.703(b) of the Rules, what SWBT requests is "reconsideration," *not* "clarification." The *Local Competition Order*[7] which adopted Section 51.703(b) was put on public notice when published in the Federal Register on August 29, 1996. 62 Fed. Reg. 45476; *see also* 47 C.F.R. § 1.4(b)(1) (public notice of rulemaking decisions). Any petitions for reconsideration of that decision were therefore due thirty days later, *i.e.*, on or before September 30, 1996. *See* 47 U.S.C. § 405(a). Because it was filed almost *eight months later*, SWBT's *Letter* is a procedurally defective petition for reconsideration and should be summarily dismissed.

III. SWBT's Requested "Clarification" Is Inconsistent with the 1996 Act and the Commission's Rules and Therefore Should Not Be Adopted

Even if the Commission does not dismiss the *Letter* as an untimely request for reconsideration, the "clarification" SWBT requests should not be granted because it is contrary to the 1996 Act and the Commission's policies and Rules. Specifically, adoption of the relief sought by SWBT would serve to undo the Commission's steady progress over the past decade toward requiring ILECs to treat all wireless telecommunications carriers on an equal footing and to provide them with interconnection on a fair and undiscriminatory basis. In 1987, the Commission adopted a policy requiring LECs to negotiate interconnection agreements with radio common carriers in good faith and compensate radio common carriers for the reasonable costs incurred by such carriers in terminating traffic that originates on

---

[7] *Local Competition Provisions of the 1996 Telecommunications Act*, First Report and Order, 11 FCC Rcd 15499 ("Local Competition Order"), *recon. in part* 11 FCC Rcd 13042, *partially stayed sub nom. Iowa Utilities Board v. FCC,* Case No. 96-3406, slip op. (8th Cir., Oct. 15) *stay lifted in part Iowa Utilities Board v. FCC*, slip op. (8th Cir., Nov. 1, 1996). While initially, all of the FCC's regulations implementing Section 251(b)(5) of the Act were stayed by the Eighth Circuit, U.S. Court of Appeals, that stay was lifted on November 1, 1996, for Sections 51.701, 51.703, and 51.717. *See* 47 C.F.R. §§ 51.701, 51.703, 51.717.

LEC facilities.[8] Over three years ago, by adopting Section 20.11 of its Rules, the Commission confirmed and codified the requirement that LECs and Commercial Mobile Radio Service ("CMRS") providers, formerly referred to as radio common carriers, must comply with principles of mutual compensation for the exchange of local traffic. 47 C.F.R. § 20.11. The Commission's efforts were bolstered by the 1996 Act and culminated in last summer's *Local Competition Order*, which confirmed and emphasized that paging carriers are entitled to treatment equal not only to that received by other mobile carriers, but by all telecommunications carriers.

Section 251(a) of the 1996 Act imposes a duty on all telecommunications carriers to interconnect with each other, including SWBT (and other LECs) with PageNet (and other paging carriers). Concomitantly, Sections 251(b)(5) and 252(d)(2) of the 1996 Act provide that each carrier is entitled to compensation for the transport and termination of local telecommunications traffic that originates on another carrier's network. The Commission made it clear, by adopting Section 51.703(a) of its Rules in the *Local Competition Order*, that this obligation extended to LEC arrangements with paging carriers:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications." . . . Accordingly, LECs are obligated, pursuant to section 251(b)(5)(and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, *including paging providers*, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation. . . .[9]

---

[8] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2915-16 (1987).

[9] *Local Competition Order*, 11 FCC Rcd at 15,997, ¶1008. Section 51.703(a) of the Commission's rules states unequivocally that "[e]ach LEC *shall* establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic (continued...)

In short, by making explicit that paging carriers are entitled to enter into reciprocal compensation arrangements, the Commission recognized that paging carriers are under an obligation to accept traffic that originates on the networks of LECs (among others), and transport and/or terminate such traffic to its final destination. The Commission's decision also reflects the fact that paging carriers incur costs in doing so for which they are entitled to receive compensation. Otherwise, the Commission, in Section 51.703, would not have specifically interpreted Section 251(b)(5) to impose obligations upon LECs *vis-a-vis* paging carriers.[10]

The propriety of the Commission's interpretation of the 1996 Act has been echoed in a recent decision of the California Public Utilities Commission ("CPUC"). In an arbitration between Pacific Bell ("PacBell") and a paging carrier, Cook Telecom, Inc., the CPUC recognized the existence under the 1996 Act of the obligations described above on the part of both carriers. In response to arguments by Pacific Bell seeking to deprive paging carriers of compensation for the transport and termination of PacBell- originated traffic, the CPUC stated:

> We believe that Congress intended that each and every carrier should be compensated for the costs that it incurs in terminating traffic, and did not

---

[9](...continued)
with *any* requesting telecommunications carrier. 47 C.F.R. §51.703(a) (emphases added). All commercial mobile radio service ("CMRS") providers, including paging companies, are "telecommunications carriers." 47 C.F.R. § 51.5. *See also Local Competition Order*, 11 FCC Rcd at 15,989, ¶ 993; 47 C.F.R. § 20.3 (definition of "CMRS")."

[10] It is important to note that the Commission made this decision with full acknowledgment that traffic at this time in a LEC-paging carrier relationship is land-to-mobile. *See id.* ¶1084 (Celpage: "virtually 100 percent" land-to-mobile), ¶1107 (PageNet: "entirely one-way"). Moreover, the FCC's *Local Competition Order* and Section 51.703(a) make no distinction between paging or other CMRS providers that use Type II interconnection and those using Type I. The entitlement to enter into reciprocal compensation agreements is general.

> intend to deny a class of carriers — in this case, one-way paging — the right of compensation simply because there is no traffic terminated on the local exchange carrier's network. We fail to discern any public policy that Congress intended to further by denying such compensation to one-way paging carriers when, at the same time, Congress went to such great lengths to grant such carriers the right to interconnect and compete on an equal footing under the Act.[11]

The PUC went on to find that Cook was entitled to compensation for the transportation of PacBell-originated traffic, and that the facilities connecting the two carriers to carry the land-to-mobile traffic were PacBell's.[12]

Consequently, SWBT's requested "clarification" would be contrary to the reciprocal compensation provisions of the 1996 Act and the Commission's Rules. Sections 251(b)(5) and 252(d)(2) of the 1996 Act and Section 51.703 of the Rules make clear as a general matter that, when traffic is exchanged between providers, "each carrier" is to bear its own costs of origination. When a landline subscriber originates a call to a paging subscriber, the landline LEC originates the call and the paging company terminates it. For such calls, therefore, the LEC is *not* entitled to compensation by the paging carrier. It is, however, compensated by its subscribers.

Conversely, "each carrier" is obligated to compensate the other *only* for the transport and termination of the call on the other carrier's network on the far side of the point of interconnection. 47 U.S.C. §§ 251(b)(5) and 252(d)(2).[13] Thus, to the extent either carrier is compensated by the other, it is when the carrier *terminates* the calls of the other, for

---

[11] Interim Opinion, CPUC Decision 97-05-095, Application 97-02-003, at 4 (May 21, 1997) ("Cook Decision").

[12] *Id.* at 11-12.

[13] *See* 47 C.F.R. § 51.701(c) (transport is the transmission of traffic "*from the interconnection point* between the two carriers to the termination carrier's end office switch that directly serves the called party")(emphasis added).

example, when a paging carrier terminates the calls of an ILEC.[14] SWBT seeks compensation from paging carriers, however, for the carriage of traffic on *SWBT's side* of the interconnection point (*i.e.*, the MTSO), in other words for the *origination* of traffic. In short, Section 251(b)(5) simply does not entitle SWBT to compensation from PageNet or any other carrier for the origination of traffic. Rather, SWBT can — and does — receive compensation from its subscribers.

While SWBT claims that it seeks compensation for "facilities," not traffic, the result must be the same: the facilities at issue are part of SWBT's network and are installed solely for the purpose of carrying traffic originated by SWBT's customers to PageNet's switch, from which point PageNet transports and terminates the traffic for SWBT. Under Section 51.703(b), as explained in Section II, it is plain that SWBT may not charge paging carriers for such traffic. By attempting to recharacterize the charges as being for the underlying facilities, SWBT seeks to elevate form over substance to achieve that which it is otherwise prohibited from doing. The bottom line is that the SWBT facilities at issue are dedicated to carrying SWBT-originated traffic, and a putative charge for the facilities is thus indistinguishable from an impermissible charge for SWBT-originated traffic. Neither is allowed under Section 51.703(b).

If SWBT were correct, Sections 251(b)(5) and 252(d)(2) would be gutted, because paging carriers would not, as a net compensation matter, receive from LECs their "additional costs" of transport and termination to which the 1996 Act entitles them. *See* 47 U.S.C. § 252(d)(2)(A). Rather, paging carriers would be forced to collect their transport and

---

[14] *Cook Decision* at 4 ("We believe that Congress simply recognized that historically, while local exchange carriers have been compensated by competitors for terminating competitors' traffic, the local exchange carrier should reciprocate by compensating competitors for terminating the local exchange carrier's traffic.")

termination costs *minus* some of the LEC's originating costs. Such a regressive result would be reminiscent of arrangements that were prevalent before the 1996 Act and the *Local Competition Orders* in which CMRS providers paid incumbent LECs for traffic between the landline and mobile networks regardless of who originated the traffic. Such arrangements resulted from the ILEC's ability to leverage their monopoly power and relegate CMRS providers to second-class citizenship: LECs would interconnect with paging carriers only if the latter would pay for the interconnecting "facilities" used to carry SWBT-originated-only traffic. Such one-sided arrangements must be left to the dustbins of history.

In addition to being consistent with the reciprocal compensation provisions of the 1996 Act and Commission Rules, the result urged by PageNet — *i.e.*, SWBT is to bear the originating costs of the SWBT-traffic at issue — is not inequitable as the *Letter* contends.[15] Quite the contrary. A prohibition against the charges that SWBT seeks to assess is the only equitable result because it would force SWBT to treat paging carriers the same as it must treat CLECs and other CMRS providers.

Specifically, when a SWBT subscriber places a call to a CLEC, paging carrier, or other CMRS carrier, the functions performed by the SWBT network in originating the call are essentially identical in each case, as are its costs. SWBT's claim that, if PageNet's interpretation of the Act and Rules is correct, SWBT will have "no basis" to recover its originating costs when the terminating carrier is a paging company is utterly disingenuous. SWBT recovers its originating costs, and revenues in general, in the same way it does when the terminating carrier is a CLEC or other CMRS provider, *i.e.*, through charges for local exchange service to its own subscribers. It should be required to continue to do so.

---

[15] *Letter* at 3 ("the Commission's rules (as construed by paging providers) will provide no basis for LECs to recover these [traffic sensitive origination] costs.")

Otherwise, not only will SWBT be unlawfully discriminating against paging carriers *vis-a-vis* CLECs and other CMRS providers, the outcome would be at odds with Section 254 of the Act and the Commission's recent decisions in its *Universal Service Reform* and *Access Charge Reform*. First, contrary to Section 254(e), there would be, in effect, an implicit universal service subsidy of SWBT's local exchange customers' service, as paging carriers would be paying some of SWBT's local exchange origination costs. Second, the subsidy would not be paid by all telecommunications providers in a competitively neutral fashion, but would be borne by paging carriers alone, violating Section 254(d). Accordingly, the relief SWBT seeks must be denied.

IV. Conclusion

For the foregoing reasons, and those in the *Joint Response*, the Commission should summarily dismiss the SWBT *Letter* as an untimely petition for reconsideration. In the event the Commission does *not* treat the *Letter* as a petition for reconsideration, the Commission should prohibit SWBT and other LECs from assessing charges for the carriage of traffic originating on their own networks to paging carriers for termination.

Respectfully submitted,

PAGING NETWORK, INC.

By: _____

Judith St. Ledger-Roty
Edward A. Yorkgitis, Jr.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
(202) 955-9600

Its Attorneys

June 13, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of June, 1997, copies of the foregoing **Comments of PageNet on Southwestern Bell Telephone Letter Requesting Reconsideration** were served upon the following persons:

By hand delivery:

Wanda Harris (2 copies)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, DC 20554

ITS, Inc.
2100 M Street, N.W.
Suite 140
Washington, DC 20037

Richard Metzger
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Mary Beth Richards
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

James Schlichting
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, DC 20554

Ed Krachmer
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, DC 20554

Dan Phython
Office of Legislative and
Intergovernmental Affairs
Federal Communications Commission
1919 M Street, N.W., Room 808
Washington, DC 20554

William E. Kennard
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, DC 20554

Aliza F. Katz
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 623
Washington, DC 20554

Thomas Boasberg
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 819
Washington, DC 20544

James L. Casserly, Senior Legal
Advisor to Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

James R. Coltharp, Special Counsel
to Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Suzanne Toller, Legal Advisor
to Commissioner Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Dan Gonzales, Legal Advisor
to Commissioner Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

By U.S. Mail, postage prepaid:

Paul E. Dorin
Southwestern Bell Telephone Company
One Bell Center, Room 3534
St. Louis, MO 63101

Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N Street, N.W., 8th Floor
Washington, DC 20036

Mark A. Stachiw
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, TX 75251

Cathleen A. Massey
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, DC 20036

Patricia J. Goodson